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REFERENCE TITLE: tax credit; land conservation

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

HB 2566

Introduced by
Representatives Rosati, Hubbs, O'Halleran: Barnes, Boone, Gray L,
Huppenthal, Jayne, Quelland, Reagan, Straughn, Stump

AN ACT

AMENDING SECTION 43-222, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1081.03; AMENDING SECTION 43-1121, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 11, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1182; RELATING TO INDIVIDUAL AND CORPORATE INCOME TAX CREDITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 43-222, Arizona Revised Statutes, is amended to
3 read:

4 43-222. Income tax credit review schedule

5 Each year the joint legislative income tax credit review committee
6 shall review the following income tax credits:

7 1. In 2003, sections 43-1074.01, 43-1081, 43-1085, 43-1168, 43-1170,
8 43-1173 and 43-1178.

9 2. In 2004, sections 43-1081.01, 43-1083, 43-1084 and 43-1170.01.

10 3. In 2005, sections 43-1087, 43-1088, ~~and~~ and 43-1175.

11 4. In 2006, sections 43-1073, 43-1089, 43-1089.01, 43-1089.02,
12 43-1090, 43-1176 and 43-1181.

13 5. In 2007, sections 43-1077, 43-1078, 43-1079, 43-1080, 43-1165,
14 43-1166, 43-1167 and 43-1169.

15 6. IN 2009, SECTIONS 43-1081.03 AND 43-1182.

16 Sec. 2. Title 43, chapter 10, article 5, Arizona Revised Statutes, is
17 amended by adding section 43-1081.03, to read:

18 43-1081.03. Credit for property donations for conservation
19 purposes; definition

20 A. A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE IN THE
21 AMOUNT OF THIRTY PER CENT OF THE VALUE OF REAL PROPERTY AND IMPROVEMENTS
22 DONATED BY THE TAXPAYER TO THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS
23 STATE FOR CONSERVATION PURPOSES.

24 B. TO QUALIFY FOR THE CREDIT:

25 1. THE REAL PROPERTY AND IMPROVEMENTS MUST BE LOCATED IN THIS STATE.

26 2. THE REAL PROPERTY AND IMPROVEMENTS MUST BE CONVEYED UNENCUMBERED
27 AND IN FEE SIMPLE, EXCEPT THAT THE CONVEYANCE MUST INCLUDE AS A DEED
28 RESTRICTION AND PROTECTIVE COVENANT RUNNING WITH TITLE TO THE LAND A
29 CONSERVATION EASEMENT PURSUANT TO TITLE 33, CHAPTER 2, ARTICLE 4 OR THE
30 REQUIREMENT THAT AS LONG AS THE DONEE HOLDS TITLE TO THE PROPERTY THE
31 PROPERTY SHALL BE USED ONLY FOR CONSERVATION PURPOSES.

32 C. FOR PURPOSES OF THIS SECTION, THE VALUE OF THE DONATED PROPERTY IS
33 THE PROPERTY'S FAIR MARKET VALUE AS DETERMINED IN A CERTIFIED APPRAISAL AS
34 DEFINED IN SECTION 32-3601 THAT IS CONDUCTED BY AN INDEPENDENT PARTY.

35 D. IF THE PROPERTY IS DONATED BY CO-OWNERS, INCLUDING PARTNERS IN A
36 PARTNERSHIP AND SHAREHOLDERS OF AN S CORPORATION, AS DEFINED IN SECTION 1361
37 OF THE INTERNAL REVENUE CODE, EACH DONOR MAY CLAIM ONLY THE PRO RATA SHARE OF
38 THE ALLOWABLE CREDIT UNDER THIS SECTION BASED ON THE OWNERSHIP INTEREST. IF
39 THE PROPERTY IS DONATED BY A HUSBAND AND WIFE WHO FILE SEPARATE RETURNS FOR A
40 TAXABLE YEAR IN WHICH THEY COULD HAVE FILED A JOINT RETURN, THEY MAY
41 DETERMINE BETWEEN THEM THE SHARE OF THE CREDIT EACH WILL CLAIM. THE TOTAL OF
42 THE CREDITS ALLOWED ALL CO-OWNER DONORS MAY NOT EXCEED THE ALLOWABLE CREDIT.

43 E. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER
44 THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS
45 TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE

1 TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE
2 YEARS' INCOME TAX LIABILITY.

3 F. THE CREDIT UNDER THIS SECTION IS IN LIEU OF ANY DEDUCTION PURSUANT
4 TO SECTION 170 OF THE INTERNAL REVENUE CODE TAKEN FOR STATE TAX PURPOSES.

5 G. ON WRITTEN REQUEST BY THE DONEE, THE DONOR SHALL DISCLOSE IN
6 WRITING TO THE DONEE THE AMOUNT OF THE CREDIT ALLOWED PURSUANT TO THIS
7 SECTION WITH RESPECT TO THE PROPERTY RECEIVED BY THE DONEE.

8 H. THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE MAY REFUSE
9 THE DONATION OF ANY PROPERTY FOR PURPOSES OF THIS SECTION.

10 I. FOR THE PURPOSES OF THIS SECTION, "CONSERVATION PURPOSES" MEANS ANY
11 OF THE FOLLOWING ACTIVITIES THAT YIELD A SIGNIFICANT PUBLIC BENEFIT:

12 1. PRESERVING LAND AREAS FOR OUTDOOR RECREATION BY OR EDUCATION OF THE
13 GENERAL PUBLIC.

14 2. PROTECTING A RELATIVELY NATURAL HABITAT OF FISH, WILDLIFE OR PLANTS
15 OR A SIMILAR ECOSYSTEM.

16 3. PRESERVING OPEN SPACE, INCLUDING FARMLAND AND FOREST LAND, IF THE
17 PRESERVATION IS EITHER:

18 (a) FOR THE SCENIC ENJOYMENT OF THE GENERAL PUBLIC.

19 (b) PURSUANT TO A CLEARLY DELINEATED FEDERAL, STATE OR LOCAL
20 GOVERNMENTAL CONSERVATION POLICY.

21 Sec. 3. Section 43-1121, Arizona Revised Statutes, is amended to read:

22 43-1121. Additions to Arizona gross income; corporations

23 In computing Arizona taxable income for a corporation, the following
24 amounts shall be added to Arizona gross income:

25 1. The amounts computed pursuant to section 43-1021, paragraphs 3
26 through 9, 13 and 27.

27 2. The amount of dividend income received from corporations and
28 allowed as a deduction pursuant to sections 243, 244 and 245 of the internal
29 revenue code.

30 3. Taxes which are based on income paid to states, local governments
31 or foreign governments and which were deducted in computing federal taxable
32 income.

33 4. Expenses and interest relating to tax-exempt income on indebtedness
34 incurred or continued to purchase or carry obligations the interest on which
35 is wholly exempt from the tax imposed by this title. Financial institutions,
36 as defined in section 6-101, shall be governed by section 43-961, paragraph
37 2.

38 5. Commissions, rentals and other amounts paid or accrued to a
39 domestic international sales corporation controlled by the payor corporation
40 if the domestic international sales corporation is not required to report its
41 taxable income to this state because its income is not derived from or
42 attributable to sources within this state. If the domestic international
43 sales corporation is subject to article 4 of this chapter, the department
44 shall prescribe by rule the method of determining the portion of the
45 commissions, rentals and other amounts which are paid or accrued to the

1 controlled domestic international sales corporation and which shall be
2 deducted by the payor. "Control" for purposes of this paragraph means direct
3 or indirect ownership or control of fifty per cent or more of the voting
4 stock of the domestic international sales corporation by the payor
5 corporation.

6 6. Federal income tax refunds received during the taxable year to the
7 extent they were deducted in arriving at Arizona taxable income in a previous
8 year.

9 7. The amount of net operating loss taken pursuant to section 172 of
10 the internal revenue code.

11 8. The amount of exploration expenses determined pursuant to section
12 617 of the internal revenue code to the extent that they exceed seventy-five
13 thousand dollars and to the extent that the election is made to defer those
14 expenses not in excess of seventy-five thousand dollars.

15 9. Amortization of costs incurred to install pollution control devices
16 and deducted pursuant to the internal revenue code or the amount of deduction
17 for depreciation taken pursuant to the internal revenue code on pollution
18 control devices for which an election is made pursuant to section 43-1129.

19 10. The amount of depreciation or amortization of costs of child care
20 facilities deducted pursuant to section 167 or 188 of the internal revenue
21 code for which an election is made to amortize pursuant to section 43-1130.

22 11. Arizona state income tax refunds received, to the extent the amount
23 of the refunds is not already included in Arizona gross income, if a tax
24 benefit was derived by deduction of this amount in a prior year.

25 12. The amount paid as taxes on property in this state by a qualified
26 defense contractor with respect to which a credit is claimed under section
27 43-1166.

28 13. The loss of an insurance company that is exempt under section
29 43-1201 to the extent that it is included in computing Arizona gross income
30 on a consolidated return pursuant to section 43-947.

31 14. The amount by which the depreciation or amortization computed under
32 the internal revenue code with respect to property for which a credit was
33 taken under section 43-1169 exceeds the amount of depreciation or
34 amortization computed pursuant to the internal revenue code on the Arizona
35 adjusted basis of the property.

36 15. The amount by which the adjusted basis computed under the internal
37 revenue code with respect to property for which a credit was claimed under
38 section 43-1169 and which is sold or otherwise disposed of during the taxable
39 year exceeds the adjusted basis of the property computed under section
40 43-1169.

41 16. The amount by which the depreciation or amortization computed under
42 the internal revenue code with respect to property for which a credit was
43 taken under either section 43-1170 or 43-1170.01 exceeds the amount of
44 depreciation or amortization computed pursuant to the internal revenue code
45 on the Arizona adjusted basis of the property.

1 17. The amount by which the adjusted basis computed under the internal
2 revenue code with respect to property for which a credit was claimed under
3 either section 43-1170 or 43-1170.01 and which is sold or otherwise disposed
4 of during the taxable year exceeds the adjusted basis of the property
5 computed under section 43-1170 or 43-1170.01, as applicable.

6 18. The deduction referred to in section 1341(a)(4) of the internal
7 revenue code for restoration of a substantial amount held under a claim of
8 right.

9 19. The amount by which a capital loss carryover allowable pursuant to
10 section 1341(b)(5) of the internal revenue code exceeds the capital loss
11 carryover allowable pursuant to section 43-1130.01, subsection F.

12 20. Any amount deducted in computing Arizona taxable income as expenses
13 for installing solar stub outs or electric vehicle recharge outlets in this
14 state with respect to which a credit is claimed pursuant to section 43-1176.

15 21. Any wage expenses deducted pursuant to the internal revenue code
16 for which a credit is claimed under section 43-1175 and representing net
17 increases in qualified employment positions for employment of temporary
18 assistance for needy families recipients.

19 22. Any amount of expenses that were deducted pursuant to the internal
20 revenue code and for which a credit is claimed under section 43-1178.

21 23. Any amount deducted for conveying ownership or development rights
22 of property to an agricultural preservation district under section 48-5702
23 for which a credit is claimed under section 43-1180.

24 24. The amount of any deduction that is claimed in computing Arizona
25 gross income and that represents a donation of a school site for which a
26 credit is claimed under section 43-1181.

27 25. THE AMOUNT OF ANY DEDUCTION THAT IS CLAIMED IN COMPUTING ARIZONA
28 GROSS INCOME AND THAT REPRESENTS A DONATION OF REAL PROPERTY AND IMPROVEMENTS
29 FOR CONSERVATION PURPOSES FOR WHICH A CREDIT IS CLAIMED UNDER SECTION
30 43-1182.

31 Sec. 4. Title 43, chapter 11, article 6, Arizona Revised Statutes, is
32 amended by adding section 43-1182, to read:

33 43-1182. Credit for property donations for conservation
34 purposes; definition

35 A. A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE IN THE
36 AMOUNT OF THIRTY PER CENT OF THE VALUE OF REAL PROPERTY AND IMPROVEMENTS
37 DONATED BY THE TAXPAYER TO THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS
38 STATE FOR CONSERVATION PURPOSES.

39 B. TO QUALIFY FOR THE CREDIT:

40 1. THE REAL PROPERTY AND IMPROVEMENTS MUST BE LOCATED IN THIS STATE.

41 2. THE REAL PROPERTY AND IMPROVEMENTS MUST BE CONVEYED UNENCUMBERED
42 AND IN FEE SIMPLE, EXCEPT THAT THE CONVEYANCE MUST INCLUDE AS A DEED
43 RESTRICTION AND PROTECTIVE COVENANT RUNNING WITH TITLE TO THE LAND A
44 CONSERVATION EASEMENT PURSUANT TO TITLE 33, CHAPTER 2, ARTICLE 4 OR THE

1 REQUIREMENT THAT AS LONG AS THE DONEE HOLDS TITLE TO THE PROPERTY THE
2 PROPERTY SHALL BE USED ONLY FOR CONSERVATION PURPOSES.

3 C. FOR PURPOSES OF THIS SECTION, THE VALUE OF THE DONATED PROPERTY IS
4 THE PROPERTY'S FAIR MARKET VALUE AS DETERMINED IN A CERTIFIED APPRAISAL AS
5 DEFINED IN SECTION 32-3601 THAT IS CONDUCTED BY AN INDEPENDENT PARTY.

6 D. IF THE PROPERTY IS DONATED BY CO-OWNERS, INCLUDING CORPORATE
7 PARTNERS IN A PARTNERSHIP, EACH DONOR MAY CLAIM ONLY THE PRO RATA SHARE OF
8 THE ALLOWABLE CREDIT UNDER THIS SECTION BASED ON THE OWNERSHIP INTEREST. THE
9 TOTAL OF THE CREDITS ALLOWED ALL CO-OWNER DONORS MAY NOT EXCEED THE ALLOWABLE
10 CREDIT.

11 E. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER
12 THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS
13 TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE
14 TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE
15 YEARS' INCOME TAX LIABILITY.

16 F. THE CREDIT UNDER THIS SECTION IS IN LIEU OF ANY DEDUCTION PURSUANT
17 TO SECTION 170 OF THE INTERNAL REVENUE CODE TAKEN FOR STATE TAX PURPOSES.

18 G. ON WRITTEN REQUEST BY THE DONEE, THE DONOR SHALL DISCLOSE IN
19 WRITING TO THE DONEE THE AMOUNT OF THE CREDIT ALLOWED PURSUANT TO THIS
20 SECTION WITH RESPECT TO THE PROPERTY RECEIVED BY THE DONEE.

21 H. THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE MAY REFUSE
22 THE DONATION OF ANY PROPERTY FOR PURPOSES OF THIS SECTION.

23 I. FOR THE PURPOSES OF THIS SECTION, "CONSERVATION PURPOSES" MEANS ANY
24 OF THE FOLLOWING ACTIVITIES THAT YIELD A SIGNIFICANT PUBLIC BENEFIT:

25 1. PRESERVING LAND AREAS FOR OUTDOOR RECREATION BY OR EDUCATION OF THE
26 GENERAL PUBLIC.

27 2. PROTECTING A RELATIVELY NATURAL HABITAT OF FISH, WILDLIFE OR PLANTS
28 OR A SIMILAR ECOSYSTEM.

29 3. PRESERVING OPEN SPACE, INCLUDING FARMLAND AND FOREST LAND, IF THE
30 PRESERVATION IS EITHER:

31 (a) FOR THE SCENIC ENJOYMENT OF THE GENERAL PUBLIC.

32 (b) PURSUANT TO A CLEARLY DELINEATED FEDERAL, STATE OR LOCAL
33 GOVERNMENTAL CONSERVATION POLICY.

34 Sec. 5. Purpose

35 Pursuant to section 43-223, Arizona Revised Statutes, the legislature
36 enacts sections 43-1081.03 and 43-1182, Arizona Revised Statutes, as added by
37 this act, to encourage taxpayers to donate real property and improvements to
38 this state and political subdivisions of this state for conservation
39 purposes.

40 Sec. 6. Effective date; applicability

41 This act is effective and applies to taxable years beginning from and
42 after December 31, 2004.